

ESTTA Tracking number: **ESTTA557617**

Filing date: **09/04/2013**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Prolacta Bioscience, Inc.
Granted to Date of previous extension	09/04/2013
Address	757 Baldwin Park Boulevard City of Industry, CA 91746 UNITED STATES

Attorney information	Peter J. Willsey Cooley LLP 1299 Pennsylvania Avenue, NW, Suite 700 Washington, DC 20004 UNITED STATES pwillsey@cooley.com, schristoff@cooley.com, vbadolato@cooley.com, smobley@cooley.com, trademarks@cooley.com Phone:202-842-7800
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Applicant Information

Application No	85852451	Publication date	05/07/2013
Opposition Filing Date	09/04/2013	Opposition Period Ends	09/04/2013
Applicant	Eco-Life Group, LLC 1301 Sawgrass Corporate Parkway 1301 Sawgrass Corporate Pkwy Sunrise, FL 33323 UNITED STATES		

Goods/Services Affected by Opposition

Class 005. All goods and services in the class are opposed, namely: Dietary and nutritional supplements
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Opposer as Basis for Opposition

U.S. Application No.	85894189	Application Date	04/03/2013
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	PROLACT CR		
Design Mark			
Description of	NONE		

Mark	
Goods/Services	Class 005. First use: human milk calorie boost; pasteurized human milk product for babies

U.S. Application No.	85847419	Application Date	02/12/2013
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	PROLACT HM		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: Pasteurized milk for babies Class 040. First use: Pasteurized milk processing services Class 044. First use: Providing pasteurized milk bank services, milk banks for the collection and preservation of pasteurized milk, and milk bank services for accepting donor milk		

U.S. Registration No.	3339735	Application Date	06/20/2006
Registration Date	11/20/2007	Foreign Priority Date	NONE
Word Mark	PROLACTA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2005/08/31 First Use In Commerce: 2005/08/31 Human milk for babies Class 040. First use: First Use: 2006/08/31 First Use In Commerce: 2006/08/31 Human milk processing services Class 044. First use: First Use: 2006/08/31 First Use In Commerce: 2006/08/31 providing human milk bank services, human milk banks for the collection and preservation of human milk, and human milk bank services for accepting donor milk		

U.S. Registration No.	3085754	Application Date	10/19/2001
Registration Date	04/25/2006	Foreign Priority Date	NONE
Word Mark	PROLACTA BIOSCIENCE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 2005/08/00 First Use In Commerce: 2005/08/00 Establishment of business for others, namely, human milk donor centers		

U.S. Registration	3777007	Application Date	04/15/2009
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No.			
Registration Date	04/20/2010	Foreign Priority Date	NONE
Word Mark	PROLACT+4		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2008/10/00 First Use In Commerce: 2008/10/00 Human milk fortifiers for infants, namely, concentrated human milk		

U.S. Registration No.	3777006	Application Date	04/15/2009
Registration Date	04/20/2010	Foreign Priority Date	NONE
Word Mark	PROLACT+6		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2008/10/00 First Use In Commerce: 2008/10/00 Human milk fortifiers for infants, namely, concentrated human milk		

U.S. Registration No.	3777004	Application Date	04/15/2009
Registration Date	04/20/2010	Foreign Priority Date	NONE
Word Mark	PROLACT+8		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2008/10/00 First Use In Commerce: 2008/10/00 Human milk fortifiers for infants, namely, concentrated human milk		

U.S. Registration No.	3777005	Application Date	04/15/2009
Registration Date	04/20/2010	Foreign Priority Date	NONE
Word Mark	PROLACT+10		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2008/10/00 First Use In Commerce: 2008/10/00 Human milk fortifiers for infants, namely, concentrated human milk		

U.S. Registration No.	3777005	Application Date	04/15/2009
Registration Date	04/20/2010	Foreign Priority Date	NONE
Word Mark	PROLACT+10		
Design Mark			

Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 2008/10/00 First Use In Commerce: 2008/10/00 Human milk fortifiers for infants, namely, concentrated human milk

Attachments	ProlactaOppositionProlactcilus.pdf(174424 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by Overnight Courier on this date.

Signature	/Vincent J Badolato/
Name	Vincent J Badolato
Date	09/04/2013

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Application Serial No. 85/852,451
For the mark PROLACTCILUS
Published in the *Official Gazette* on May 7, 2013

PROLACTA BIOSCIENCE, INC.

Opposer,

v.

ECO-LIFE GROUP, LLC

Applicant.

Opposition No. _____

NOTICE OF OPPOSITION

Opposer Prolacta Bioscience, Inc. (“Prolacta”), a Delaware corporation with its principal place of business at 757 Baldwin Park Boulevard, City of Industry, California, 91746, believes that it will be damaged by the issuance of a registration for the PROLACTCILUS mark, as applied for in Application Serial No. 85/852,451 by Applicant Eco-Life Group, LLC d/b/a VitalStyle (“Applicant”), a Florida limited liability company with its principal place of business at 1301 Sawgrass Corporate Parkway, Sunrise, Florida, 33323. Prolacta thus hereby opposes the registration of Applicant’s PROLACTCILUS mark.

As grounds for its opposition, Prolacta alleges the following.

1. Since at least as early as August of 2006, Prolacta has used the PROLACTA tradename and trademark in United States commerce in connection with its health-related products and services focused on improving infant well-being (including human milk for babies and human milk fortifiers). Prolacta also owns trademark rights, including common law trademark rights, in a larger family of marks featuring “PROLACT,” including the marks

PROLACTA BIOSCIENCE, PROLACTA BIOSCIENCE & Design, PROLACT+4, PROLACT+6, PROLACT+8, PROLACT+10, PROLACT CR, and PROLACT HM (collectively, the “PROLACTA Marks”). In its dedication to improving the quality of life for premature infants in neonatal intensive care units (“NICUs”), Prolacta creates specialty formulations at the first large-scale human milk processing facility in the world for the nutritional needs of premature infants in NICUs and sells the formulations to NICUs throughout the United States.

2. Prolacta enjoys considerable goodwill in the PROLACTA Marks because of, among other things, the high quality products and services it renders in connection with the marks, its extensive network of hospital and healthcare customers, and its consistent long term use of the mark in commerce.

3. On February 18, 2013, Applicant filed an intent-to-use application for the PROLACTCILUS mark (Serial No. 85/852,451) in connection with “Dietary and nutritional supplements” in Class 5 (“Applicant’s Goods”).

4. Applicant’s application for the PROLACTCILUS mark was published for opposition in the *Official Gazette* on May 7, 2013. In order to more fully investigate the application, Prolacta requested and was granted an extension of time to September 4, 2013, to oppose the PROLACTCILUS application.

5. Prolacta has used the PROLACTA Marks exclusively and continuously in connection with its products and services in United States commerce before the filing date of Applicant’s intent-to-use PROLACTCILUS application, and as such there is no question that Prolacta holds prior rights with respect to the trademarks at issue.

6. Prolacta is not affiliated, connected, or otherwise associated with Applicant or its goods; nor has Prolacta endorsed, sponsored, or otherwise approved of Applicant or its goods.

7. Applicant's PROLACTCILUS mark is confusingly similar to the PROLACTA Marks, as the dominant portion of all of the marks is the term "PROLACT." As such, the PROLACTCILUS mark is highly similar to the PROLACTA Marks in visual appearance, pronunciation, and overall commercial impression.

8. The application for the PROLACTCILUS mark includes a description of goods ("dietary and nutritional supplements") that is sufficiently broad to cover products offered by Prolacta in connection with the PROLACTA Marks, namely nutritional supplements for babies, infants, children, and mothers. Many nutritional supplement products are marketed and sold to hospitals and/or other healthcare providers, which are then distributed to infants. As such, the goods identified in the application for the PROLACTCILUS mark are closely related, if not in some instances identical, to the products and services provided by Prolacta under its PROLACTA Marks

9. Accordingly, Applicant's use and registration of the PROLACTCILUS mark in connection with Applicant's Goods is likely to cause the public to be confused or to have a mistaken belief as to the affiliation, connection, or association between Applicant and Prolacta, or as to the origin, sponsorship, or approval of Applicant's Goods by Prolacta.

10. Pursuant to Sections 2(d) and 3 of the Lanham Act, 15 U.S.C. §§ 1052(d) and 1053, the Board should refuse to register the PROLACTCILUS mark in Class 5 because it will cause substantial damage to Prolacta's prior existing, superior, and valuable rights in the PROLACTA Marks, and will interfere with Prolacta's enjoyment of those rights.

WHEREFORE, Prolacta respectfully requests that the Board sustain this Opposition and refuse to register Ser. No. 85/852,451 for the PROLACTCILUS mark.

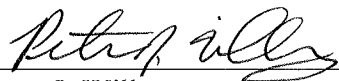
Please charge Deposit Account No. 03-3118 the requisite filing fee of \$300 for this Notice of Opposition and address all future correspondence regarding this matter to Peter J. Willsey, Cooley LLP, 1299 Pennsylvania Avenue, NW, Suite 700, Washington, D.C. 20004; Email: trademarks@cooley.com.

Respectfully submitted,

COOLEY LLP

Date: September 4, 2013

By:


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Attorneys for Prolacta Bioscience, Inc.

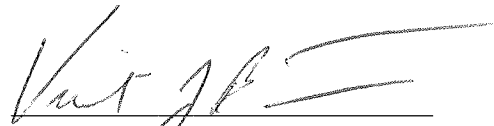
CERTIFICATE OF SERVICE

I hereby certify that on the date indicated below, a true and correct copy of the foregoing NOTICE OF OPPOSITION was served upon Applicant Eco-Life Group, LLC d/b/a VitalStyle's attorney of record for the subject application via Federal Express at the following address:

Neeta Kaur, Esq.
Eco-Life Group, LLC d/b/a VitalStyle
1301 Sawgrass Corporate Parkway
Sunrise, FL 33323

Attorney for Eco-Life Group, LLC d/b/a VitalStyle

Date: September 4, 2013

A handwritten signature in black ink, appearing to read "Vincent J. Badolato", written over a horizontal line.

Vincent J. Badolato
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